

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ALLIANTGROUP, L.P.,)	CASE NO: 4:16-CV-03114
)	
Plaintiff,)	CIVIL
)	
vs.)	Houston, Texas
)	
BRAD MOLS, ET AL.,)	Friday, June 29, 2018
)	
<u>Defendants.</u>)	(2:00 p.m. to 3:11 p.m.)

MISCELLANEOUS HEARING

BEFORE THE HONORABLE NANCY K. JOHNSON,
UNITED STATES MAGISTRATE JUDGE

Appearances: See next page

Case Manager: Shannon Jones

Court Recorder [ECRO:] Jennifer Olson

Transcribed By: Exceptional Reporting Services, Inc.
P.O. Box 18668
Corpus Christi, Texas 78480-8668
361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

APPEARANCES FOR:**Plaintiff:**

KIMBERLY R. MIERS, ESQ.
Littler Mendelson
2001 Ross Ave., Suite 1500
Dallas, TX 75201

MATTHEW L. SIMMONS, ESQ.
Littler Mendelson
1301 McKinney, Suite 1900
Houston, TX 77010

Defendants:

BRIAN S. HUMPHREY, II, ESQ.
Abraham Watkins, et al.
800 Commerce St.
Houston, TX 77002

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

PLAINTIFF'S WITNESS DIRECT CROSS REDIRECT RECROSS

NOEL KERSH 4/6 28 47 48

EXHIBITS RECEIVED

1 8

2 13

Report 19

4 21

Houston, Texas; Friday, June 29, 2018; 2:00 p.m.

(Call to order)

THE COURT: All right, good afternoon, please be seated. Mr. Simmons, call your witness.

MR. SIMMONS: Plaintiff calls Noel Kersh.

NOEL KERSH, PLAINTIFF'S WITNESS, SWORN

THE CLERK: You may be seated.

DIRECT EXAMINATION

BY MR. SIMMONS:

Q Mr. Kersh, can you state your name for the record?

A Yes, Noel Edwin Kersh.

MR. SIMMONS: And then, your Honor, we request Mr. Kersh leave to work on his laptop to show you a demonstration of a CCleaner. It's a very short demonstration of the methodologies you have to get to to change it from the normal pattern to a secure delete, which is not the default.

THE COURT: Okay, so do you want me to stand in back of him?

MR. SIMMONS: I -- so we already have it hooked up here so --

THE COURT: Okay.

MR. SIMMONS: -- I just need him leave to --

THE COURT: All right, that's fine.

MR. SIMMONS: -- go to the laptop.

THE WITNESS: Is it okay?

1 **MR. SIMMONS:** Yes.

2 **THE WITNESS:** Okay.

3 **(Witness steps down)**

4 **THE COURT:** And this is what program again?

5 **MR. SIMMONS:** CCleaner.

6 **THE COURT:** CCleaner.

7 **MR. SIMMONS:** Yes, your Honor. And whatever you're
8 doing, just go ahead and --

9 **THE WITNESS:** Navigate.

10 **MR. SIMMONS:** Yeah.

11 **THE WITNESS:** And dictate, okay. So where we're at
12 right now is a CCleaner dot com. What we're about to do is
13 download the professional version of the software from the
14 website, so I'm going to click on the --

15 **THE COURT:** Is that how you do it, you don't buy it
16 in a package anymore, you have to download it?

17 **MR. SIMMONS:** You have to download it. But for this
18 purpose, you actually also download a seven-day free trial in
19 addition. But it's the same software. But you --

20 **THE WITNESS:** The free --

21 **MR. SIMMONS:** -- can comment on that actually.

22 **THE WITNESS:** Yeah, the free trial has the same
23 features as the paid version, it's just after a period of time,
24 the software expires and it forces you to purchase or to
25 uninstall it.

1 **THE COURT:** Okay.

2 **THE WITNESS:** So what it's -- what we've done so far
3 is just the download has completed. And this is --

4 **(Witness/Ms. Speaker confer)**

5 **MR. SIMMONS:** Okay, let's go ahead and skip this. I
6 think you need an admin password.

7 **THE WITNESS:** Okay.

8 **MR. SIMMONS:** So go ahead and go up, yeah.

9 **(Witness retakes the stand)**

10 **DIRECT EXAMINATION (RESUMED)**

11 **BY MR. SIMMONS:**

12 Q So in lieu of this -- just in case, so actually, you know,
13 instead of that, you downloaded the version already on the USB
14 drive?

15 A Yes.

16 Q Let's go ahead and do that.

17 A Okay.

18 **(Witness steps down)**

19 **MR. SIMMONS:** I apologize, your Honor.

20 **THE COURT:** It's all right.

21 **BY MR. SIMMONS:**

22 Q So what are you clicking on?

23 A What we're doing is we're -- I'm about to install CCleaner
24 version 5.38 Pro.

25 **MR. SIMMONS:** Okay.

1 **MS. SPEAKER:** It's the same issue.

2 **THE WITNESS:** And we have the same problem.

3 **MR. SIMMONS:** Well, go ahead and go back up.

4 **THE WITNESS:** Okay.

5 **(Witness retakes the stand)**

6 **MR. SIMMONS:** You've got a hard copy of the process
7 that one goes through in order to download CCleaner and the
8 prompts that you get --

9 **THE COURT:** Because he's done that before.

10 **MR. SIMMONS:** Because he's done this and these are
11 from them.

12 **THE COURT:** He took screenshots.

13 **THE WITNESS:** Yes, ma'am.

14 **MR. SIMMONS:** That is correct, your Honor.

15 **THE COURT:** Okay, all right.

16 **MR. SIMMONS:** Here's a copy for the Judge. May I
17 approach the witness?

18 **THE COURT:** You may.

19 **THE WITNESS:** Thank you.

20 **BY MR. SIMMONS:**

21 Q Mr. Kersh, you're looking at a grouping of screenshots; do
22 you recognize this document?

23 A Yes, sir.

24 Q How do you recognize this document?

25 A I created these screenshots myself.

1 Q And how did you create these screenshots?

2 A I went and found a previous version of CCleaner, version
3 5.38, downloaded the application, installed the application,
4 and then took screenshots during the installation and through
5 the operation of the software.

6 Q And why is version 5.38 an important version in this
7 matter?

8 A That's the same version that we saw running on the Mols
9 laptop.

10 MR. SIMMONS: Request that this document be admitted
11 as Plaintiff's 1, your Honor.

12 THE COURT: Any objection?

13 MR. HUMPHREY: No objection, your Honor.

14 THE COURT: It's admitted.

15 (Plaintiff's Exhibit Number 1 was received in evidence)

16 BY MR. SIMMONS:

17 Q Okay, Mr. Kersh, the first page, is that -- tell me what
18 this first page is and let's just walk through it.

19 A The first page is the screen you see when the setup
20 begins, right after you double-click the executable for the
21 install, it prompts you with this screen.

22 Q Okay. If you can speak up just a little bit.

23 A Okay, I think the --

24 Q And on the second page, what does that show?

25 A The second page is when an install the application, the

1 application went and checked the peer four website and said,
2 hey, there's a newer version of the software available, do you
3 want to install it. On this of course I selected "no" because
4 I wanted to install version 5.38.

5 Q And whenever you move to the third page, what are we
6 looking at there?

7 A What this is is the screen that the user has to go to in
8 order to change the default setting that is normal file
9 deletion to the secure file deletion. And you'll see that
10 secured deletion option right in the middle of that screen.
11 And so the user has to select first options and then they go to
12 settings under that submenu, and that's how you get to the
13 screen.

14 Q And so the default under this version of CCleaner is
15 normal file deletion faster next to the secure deletion bar; am
16 I reading that correct?

17 A That's correct. And I would say that I tested version
18 5.38, version 5.44, and a couple other versions of CCleaner on
19 different, various machines, and every single one of them the
20 default for normal file deletion or secured file deletion was
21 in every case normal file deletion.

22 Q And how does normal file deletion differ from secure file
23 deletion, which you can see on the next page?

24 A So on the secure file deletion, once the user selects that
25 as an option, they're offered four different options for

1 severity of the wiping of the data. Essentially it makes -- it
2 can either make one pass over the data that overrides the data
3 or you can go all the way up to 35 passes across the data to
4 override it.

5 Q And whenever you override data using the secure file
6 deletion button and change it from the normal setting, is there
7 any unique pattern that you see in the files that's different?

8 A Yes. In fact it's a pattern that is unique to CCleaner.
9 From a forensic examiner standpoint, when I have a case that
10 CCleaner's been used on, it's an unmistakable fingerprint
11 that's left on the computer. And what happens is the -- all
12 the file names are changed from the previous file names to Z's
13 and periods. So it goes through -- it goes and overwrites the
14 file name 26 different times for each letter in the alphabet
15 from all A's to B's to C's to Z's ultimately. And so when we
16 see that, we know that that is a fingerprint of the secured
17 delete feature of CCleaner being used on the evidence.

18 Q And so do I understand you correctly that you wouldn't see
19 Z's in the files if you had the normal file deletion feature,
20 which is the default?

21 A That's correct. And I confirmed that by both my testing
22 of the normal file deletion on some of my exam computers, and
23 then also my experience with CCleaner. This isn't the first
24 case that this has come up before. And in also talking to one
25 of my other senior examiners and confirming as a peer review

1 step, is this your understanding of the way CCleaner works as
2 well, and he confirmed my --

3 **THE COURT:** So say that again. So if --

4 **THE WITNESS:** Okay.

5 **THE COURT:** -- it's just the normal delete, what
6 would it show?

7 **THE WITNESS:** It only shows that the application was
8 run but none of the file names are changed --

9 **THE COURT:** Are changed.

10 **THE WITNESS:** -- to Z's, yes, ma'am.

11 **BY MR. SIMMONS:**

12 Q And then in the normal -- if it was run in the normal
13 setting, which the default is, would you be able to recover the
14 files that it has done a normal file deletion on?

15 A I believe there -- I believe we could. I haven't had to
16 do that before but I believe we could because it's not doing as
17 a severe a delete over the files as the secure feature is.

18 Q Then if someone runs the secure file deletion where you
19 get the Z's from, is it possible to get the full files back at
20 all?

21 A It's almost impossible to do that. To get it -- you can't
22 get it back. It is impossible to get them back in their
23 original form. It's impossible because what the program is
24 doing is it's taking data and overwriting the Word document, as
25 an example, with just random characters or could be a series of

1 characters that's -- that the program is doing to override the
2 content of that file, making the restoration of that deleted
3 file to its previous original state impossible.

4 Q Is CCleaner a data recovery software?

5 A No, it's not.

6 Q And you state in your affidavit -- let's go ahead and --

7 **MR. SIMMONS:** May I approach the witness?

8 **THE COURT:** You may.

9 **BY MR. SIMMONS:**

10 Q Do you recall -- do you recognize this document?

11 A Yes, I do.

12 Q How do you recognize this document?

13 A This is my affidavit that I submitted, the June 11th,
14 2018.

15 Q And is that your signature at the bottom of page two?

16 A Yes, it is.

17 **MR. SIMMONS:** Move to admit Plaintiff's 2, the
18 affidavit of Noel Kersh.

19 **THE COURT:** Any objection?

20 **MR. HUMPHREY:** I object to the attached document as
21 hearsay, your Honor, but other than that, the affidavit --

22 **THE COURT:** All right, do you want to prove up the
23 affidavit submitted and I'll let you prove up the attached
24 documents?

25 **MR. SIMMONS:** Thank you, your Honor.

1 **BY MR. SIMMONS:**

2 Q If you want to look at the attached document behind the
3 affidavit, --

4 A Yes.

5 Q -- it's an email from you to me, Matt Simmons, Mr.
6 Humphrey, Mr. Simpson, Ms. Miers, and Matt Marzullo, do you
7 recognize this document?

8 A Yes, I do.

9 Q How do you recognize this document?

10 A I prepared it.

11 Q And this document's dated June 6, 2018.

12 A Yes, sir.

13 Q And did you prepare this document based on your own
14 knowledge?

15 A Yes.

16 **MR. SIMMONS:** Move for the admission of the affidavit
17 and its attachment into evidence, your Honor.

18 **THE COURT:** Objection?

19 **MR. HUMPHREY:** No objection to the extent it's there
20 to illustrate his testimony, your Honor.

21 **THE COURT:** Admitted.

22 **(Plaintiff's Exhibit Number 2 was received in evidence)**

23 **BY MR. SIMMONS:**

24 Q Mr. Kersh, in your affidavit, you state that at some point
25 in time the CCleaner professional was removed from the system.

1 A Yes.

2 Q What effect, if any, did the removal of the CCleaner
3 software have on your ability to examine how it was utilized on
4 the computer?

5 A When the application is uninstalled, it removes
6 information from the Windows registry which would tell us what
7 kind of settings that the person had in the software. And
8 that's what we're missing from the installation --
9 uninstallation, I should say.

10 Q Can you --

11 **THE COURT:** And what does that mean?

12 **THE WITNESS:** Well, if they had a setting in there,
13 for example, to wipe a specific folder, because that's one
14 thing that you can do in the software, you can specify a
15 specific folder that you want the program to wipe. If they had
16 specified that in CCleaner and then uninstalled the program,
17 the -- that setting goes away, it's invisible to us and we
18 can't get it back.

19 **BY MR. SIMMONS:**

20 Q But if they hadn't uninstalled the program, you would have
21 been able to see what selections they had elected to wipe?

22 A We would have been able to see the last selections that
23 they made in the software. So unless they had gone back into
24 the software and removed that folder from what they wanted to
25 be included in a wipe, then we wouldn't have seen that. But if

1 they had left that as a selection, then we would have.

2 Q If the CCleaner software wasn't uninstalled, would you be
3 able to tell beyond the Z's whether the user had selected
4 secure delete versus the normal delete?

5 A Yes, that is something we could tell.

6 **THE COURT:** So how do you uninstall something; do you
7 just delete it?

8 **THE WITNESS:** No, ma'am. There's two ways primarily.
9 The program will either come with an uninstallation program
10 that is designed to remove itself from the computer, or you can
11 use the Windows uninstall feature to uninstall a specific
12 software.

13 **THE COURT:** Okay.

14 **MR. SIMMONS:** And then Mr. Humphrey didn't question
15 his qualifications as an expert. I'm more than happy to prove
16 him up. Do you want me to?

17 **MR. HUMPHREY:** It's unnecessary, your Honor.

18 **THE COURT:** All right.

19 **MR. SIMMONS:** Mr. Humphrey also didn't challenge
20 chain of custody or authenticity or anything. I can prove that
21 if you up want.

22 **MR. HUMPHREY:** Unnecessary, your Honor.

23 **THE COURT:** All right. Chain of custody on the
24 laptop?

25 **MR. SIMMONS:** Correct, your Honor.

1 **THE COURT:** Okay.

2 **BY MR. SIMMONS:**

3 Q After reviewing your affidavit that's been entered as
4 Plaintiff's 2, do you notice any typographical errors in it?

5 A Yes. In paragraph four, I stated "on December 15, 2016."
6 That should read "on December 15, 2017."

7 Q So it says 2016, it should be 2017.

8 A That's correct.

9 Q And is there anywhere else where it shows why it should be
10 2017 in the attachment?

11 A If you look at paragraph five, paragraph seven, paragraph
12 eight, paragraph nine, I reference dates in 2017. Again, if
13 you flip to the attachment, there's also dates in there that
14 are pointing to 2017 as a correct date.

15 Q Do you want to look at page four of your attachment?

16 **(Pause)**

17 A Yes, if you look at the middle of the page there where it
18 says "use of CCleaner/mass deletion and override of data," the
19 second paragraph there says: "The user assist shows the setup
20 for the free version of CCleaner was run on 12/15/2017 at
21 1405."

22 Q And "1405," is that Pacific Time or Central Time?

23 A It was Pacific Time, I'm sorry.

24 Q And your affidavit is in Central time, correct?

25 A Correct.

1 Q So whenever you were reviewing Mr. Mols's laptop, his
2 personal laptop, did you find any evidence of usage of a data
3 wiping software?

4 A Yes.

5 Q What'd you find?

6 A The use of CCleaner.

7 Q Are the files that were wiped by CCleaner recoverable?

8 A I don't believe they are.

9 Q And what's the basis for your belief?

10 A The nature of the data wiping program and then the way
11 that it overwrites the data that it is trying to delete makes
12 it impossible to recover to its original state.

13 **THE COURT:** Did you try?

14 **THE WITNESS:** We're trying currently, your Honor. At
15 best, I think we might be able to get back some small fragments
16 of files. But the issue is -- one of the many issues with this
17 process is that if it does find any data, the dates on those
18 files are going to be -- they're gone. And then of course the
19 file names as we've already seen have been changed, so I don't
20 have any way of identifying what that file was named, when it
21 was on the computer, any information about the files so -- but
22 we are trying to undertake a process to recover what we can
23 from the laptop.

24 //

25 //

1 **BY MR. SIMMONS:**

2 Q And then my understanding looking back to Plaintiff's 1
3 with slides, there was different options within secure delete,
4 one pass versus 35 passes. If it's more than one pass, would
5 you be able to see any fragments whatsoever of any of the
6 documents?

7 A The more passes that it makes, the less likely we are to
8 recover any data from the computer.

9 Q And what's the reason why you just started to try to
10 identify whether you can identify fragments of the data?

11 A Well, it was -- it's a very expensive process. It's I
12 think estimated between five and 10,000 for us to do the
13 recovery and, if necessary, the reconstruction of fragments
14 into the files in their original state. And so I didn't want
15 to -- we've already spent a lot of time and money on this case
16 so I waited to get client authorization to do that. It came up
17 yesterday when we were doing prep and I brought up and said, we
18 haven't done that yet. But I need approval to do that. It's
19 above my -- it's above what we would normally do without prior
20 approval.

21 Q I'm going to hand you --

22 **MR. SIMMONS:** May I approach the witness?

23 **THE COURT:** You may.

24 **(Pause)**

25 //

1 **BY MR. SIMMONS:**

2 Q Mr. Kersh, this appears to be a document dated June 18th,
3 2018, forensics examination report, it's a 32-page document; do
4 you recognize this document?

5 A Yes, sir, I do.

6 Q How do you recognize this document?

7 A It's my expert report.

8 **MR. SIMMONS:** Move for admission of the report, your
9 Honor.

10 **THE COURT:** Any objection?

11 **MR. HUMPHREY:** No objection, your Honor.

12 **THE COURT:** It's admitted.

13 **(Plaintiff's Report was received in evidence)**

14 **BY MR. SIMMONS:**

15 Q Did you through your searches through Mr. Mols's laptop
16 and the other devices that are mentioned in this report, did
17 you locate any other evidence of the usage of CCleaner?

18 A We found the presence of CCleaner on the desktop computer,
19 the Mols desktop computer. It had been installed on the
20 desktop computer in 2011 and was still present on the computer
21 when we imaged it in January of 2018. I believe there was a
22 web search that was done for CCleaner in 2014 on the desktop as
23 well.

24 Q And if you don't mind flipping to page 24 of the report.

25 **THE COURT:** Was the web search for CCleaner in 2016,

1 did you say?

2 **THE WITNESS:** Fourteen, ma'am.

3 **THE COURT:** Fourteen.

4 **THE WITNESS:** Yes, ma'am.

5 **BY MR. SIMMONS:**

6 Q You on page 24?

7 A Yes.

8 Q And is that an accurate recitation of what data you found
9 on the Mols desktop computer?

10 A Yes, it is.

11 Q Was the CCleaner on the Mols desktop computer uninstalled
12 at the time of examination like the laptop computer?

13 A No, it was not.

14 **(Pause)**

15 **MR. SIMMONS:** May I approach the witness?

16 **THE COURT:** You may.

17 **(Pause)**

18 **BY MR. SIMMONS:**

19 Q I handed you with -- what is an email from you to Mr.
20 Humphrey, myself, and Mr. Sorrells (phonetic) CCing John
21 Simpson, Kim Miers, and Matt Marzullo. It's an email dated
22 this morning, and do you recognize this document?

23 A Yes, I do.

24 Q How do you recognize this document?

25 A It's an email that I sent this morning.

1 Q And then at the very end of the document, there's a
2 picture.

3 A Yes.

4 Q Do you recognize that picture?

5 A Yes, I do.

6 Q Did you take that picture?

7 A One of my examiners did.

8 Q And did you attach that picture to this email?

9 A Yes, I did.

10 MR. SIMMONS: Move for admission of the email chain
11 and picture as Plaintiff's 4, your Honor.

12 THE COURT: Any objection?

13 MR. HUMPHREY: No objection, your Honor.

14 THE COURT: It's admitted.

15 (Plaintiff's Exhibit Number 4 was received in evidence)

16 BY MR. SIMMONS:

17 Q According to this email in -- you -- can you describe for
18 me what this email is stating from you to Mr. Humphrey and
19 myself?

20 A Yes. We did our -- we conducted our initial analysis, the
21 USB device analysis, and we identified certain USB devices that
22 had been connected to the computers. We provided those reports
23 to both sides simultaneously as agreed in the agreed protocol.
24 And then what this is -- and then there was a period of time
25 when Mr. Mols was producing USB drives that he found to us for

1 examination. And so what this is -- and we received the last
2 USB device yesterday morning from Mr. Humphrey. And what this
3 is is just a -- stating essentially of the five devices that
4 were connected to the laptop, we --

5 Q What laptop?

6 A I'm sorry, the Mols laptop, we have received three of
7 those devices. And you can see in there, they're highlighted
8 with the evidence number, those are Pathway evidence numbers
9 that we've assigned to those devices. Then there are two
10 devices there that are not highlighted and those are two
11 devices that we have not yet received.

12 Q And so just to be sure, all five of these devices that are
13 cited in this particular email are devices that you know were
14 plugged into Mols's personal laptop.

15 A That's correct.

16 Q And what methods and techniques did you utilize to find
17 out that these devices were plugged into Mols's personal
18 laptop?

19 A We analyzed the Windows registry. There's several
20 different artifacts on the computer that record USB device
21 connections to the computer, so among those would be the
22 Windows registry. We also analyzed the setup API logs.
23 There's a number of different artifacts, I won't bore you with
24 all of them, but we analyzed each one of those to look for the
25 connection details of the USB devices, including the make and

1 model and the serial number of those devices. And if they're
2 there, we also extract the connection dates and times of those
3 devices.

4 Q And the method that you utilized to locate whether you --
5 what USB devices were plugged into Mr. Mols's personal laptop,
6 are those methods that are the industry standard for a
7 forensics expert?

8 A Yes, they are.

9 Q Let's go ahead and focus on a very important drive. It's
10 the SanDisk Cruzer Mini. The serial number is right next to
11 it. I'm not going to make the court reporter type all that in.
12 As part of your exam in this matter, were you asked to also
13 image Mr. Mols's Alliantgroup laptop?

14 A Yes, I was.

15 Q And is there a record of that?

16 A Yes, there is.

17 Q Where is it?

18 A There was an email that I sent with the USB device report
19 from -- that was generated from his Alliantgroup computer.

20 Q And is it also included in your forensics report?

21 A Yes, it is.

22 Q Can you tell me what page that is on your forensics
23 report?

24 A It starts on page 12 of the report. And that's also the
25 same page that has the USB device activity on his Alliantgroup

1 computer.

2 Q Okay, and when reviewing Mr. Mols's Alliantgroup computer,
3 were you able to determine how many user files were on his
4 Alliantgroup laptop?

5 A Yes.

6 Q How many?

7 A There's approximately 8,400 user-created files, and those
8 are specific file extensions that we looked at. So -- and I'm
9 differentiating user-created files from the system files that
10 are executables and databases and things that the computer
11 needs to run itself, so just of the user-created files, it's
12 about 8,400.

13 Q Can you give the Court some examples? I'm not too sure
14 what user-created files are.

15 A Right.

16 Q Can you give the Court some examples, and me, of what
17 user-created files are?

18 A Sure. Just like a Microsoft Office Word document or an
19 Excel spreadsheet, PDF documents, even some compound files like
20 ZIP files and seven Z's and things like that.

21 Q So if you were to save all of these 8,400 user files on
22 Mr. Mols's Alliantgroup laptop, how much space would you need
23 to save?

24 A So I did a size on that and it was 5.6 or 5.7 gigabytes of
25 data in user files.

1 Q And along with this report on page 12, were you able to
2 identify any USB devices that were plugged into Brad Mols's
3 Alliantgroup laptop?

4 A Yes.

5 Q Is one of those devices the highlighted one actually,
6 SanDisk Cruzer Mini?

7 A Yes, it is.

8 Q And did you use the same technique and methodology to find
9 these USB drive devices than you did on the Mols's personal
10 device?

11 A Yes, I did.

12 **(Pause)**

13 Q And how many gigabytes would this SanDisk Cruzer Mini
14 potentially hold?

15 A So without the device and without knowing more details,
16 like the make and model of the device, I had a chat session
17 with a SanDisk support person to ask them what sizes does your
18 SanDisk Mini come in, and just asked them for the ranges. And
19 they said it starts at eight gigabytes and goes to 256
20 gigabytes -- I'm sorry, it starts at eight gigabytes and goes
21 up to 256 gigabytes is what they told me.

22 Q So based on your testimony, is the device, the SanDisk
23 Cruzer Mini, large enough to hold all of Alliantgroup's files
24 on Brad Mols's Alliantgroup laptop?

25 A Yes.

1 Q And in this report, when was the first date that the
2 SanDisk Cruzer Mini was plugged into Brad Mols's Alliantgroup
3 laptop?

4 A The first date was April 4th, 2016.

5 Q And at what time?

6 A At 11:02 a.m.

7 Q And then the last time it was plugged into Mr. Mols's
8 Alliantgroup laptop was when?

9 A On the same day, April 4th, 2016, at 11:36.

10 Q So am I correct in understanding that the only time this
11 device was -- the only date this device was plugged into Mr.
12 Mols's Alliantgroup laptop was on April 4th, 2016?

13 A That's correct.

14 Q And do you have an understanding of when Mr. Mols left
15 Alliantgroup?

16 A It was early May, May 2nd or May 3rd, from memory.

17 Q Of what year?

18 A Twenty-sixteen.

19 Q Are you able to identify a single document that's on this
20 SanDisk Cruzer Mini USB device?

21 A No.

22 Q Why not?

23 A In order for us to have visibility of the files that are
24 on a USB device, the file has to be copied to the USB device
25 and then it has to be opened from the USB device for us to have

1 visibility of that file on that USB device.

2 Q And an example of that, if you want to look below, is this
3 an example of a device that was open on the device and the
4 output of files that you could see?

5 A Yes, it is.

6 Q Was the SanDisk Cruzer Mini with the same serial number
7 also plugged into Mr. Mols's personal laptop?

8 A Yes, it was.

9 Q And if you wouldn't mind looking at page 14 of the
10 forensics report, where on the page 14 does it state that?

11 A If you look at the table on that page, the USB device that
12 we're talking about is on the fifth line. The last five digits
13 are 00701.

14 Q And what can you tell me about the SanDisk Cruzer Mini
15 that's on the Brad Mols personal laptop?

16 A I can't tell you anything about it. I don't know what's
17 on it.

18 Q Is there any information that you cannot derive from the
19 SanDisk Cruzer Mini due to the Windows 10 upgrade?

20 A Yes. The -- when the Windows upgrade occurred, it removed
21 the dates that those devices were connected to the computers,
22 so it removes my ability from being able to tell you when that
23 SanDisk Mini was attached to the computer.

24 **MR. SIMMONS:** Reserve to -- for redirect, your Honor.

25 **THE COURT:** All right. Mr. Humphrey?

1 **MR. HUMPHREY:** Your Honor, may I take one moment to
2 speak with my consultant?

3 **THE COURT:** Of course.

4 **(Pause from 2:34 p.m. to 2:36 p.m.)**

5 **MR. HUMPHREY:** Thank you, your Honor. May I proceed?

6 **THE COURT:** Absolutely.

7 **MR. HUMPHREY:** Good afternoon, Mr. Kersh.

8 **CROSS EXAMINATION**

9 **BY MR. HUMPHREY:**

10 Q I want to see first if we can agree on a few things.
11 Number one, CCleaner cannot delete emails off of an email
12 server unless it's run on that server.

13 A Yeah, if it's run on the server, it could certainly be
14 used to do that.

15 Q But he could not -- for example, Mr. Mols could not run
16 CCleaner on his computer and delete files off of the Gmail
17 server.

18 A That's correct.

19 Q Or any emails that weren't only on his computer.

20 A He wouldn't -- he would only be able to delete data that's
21 on his computer if he used CCleaner. It's not -- you can't
22 jump up to the network and delete emails out of Gmail and
23 things like that, that's correct.

24 Q So whatever files that you're testifying were deleted by
25 CCleaner, that does not include emails in the Gmail account,

1 Prime tax Group account, Converse email account, or any of the
2 accounts that you examined.

3 A Well, the only exception I would take to that, Mr.
4 Humphrey, is if he had downloaded the Gmails to his computer
5 and that was the only place that they existed, and then in
6 effect when CCleaner was run on the computer, it would have
7 deleted those emails and that's the only place that they would
8 ever have been, if that makes sense.

9 Q But for him to do that, he would have had to delete them
10 off of a Gmail account before or at some point.

11 A That's correct.

12 Q Without CCleaner.

13 A Correct.

14 Q You agree with me that you don't -- in your examination --
15 well, you examined not just the laptop and the desktop, you've
16 also examined Mr. Mols's Gmail account; is that right?

17 A Correct.

18 Q And a separate Converse email account that was hosted by
19 Gmail; is that right?

20 A Yes, sir.

21 Q Converse being another company that he worked with. And
22 an email account for an Ascena company that was also hosted on
23 Gmail.

24 A Yes, sir.

25 Q You've had a chance now to examine his wife's Yahoo

1 account; is that right?

2 A Correct.

3 Q You -- did you examine his Alliantgroup email account
4 before this lawsuit was filed?

5 A I don't recall. If I did, it was back at the beginning of
6 this engagement so I need to go back and look at my notes and
7 see. I don't recall.

8 Q Do you know whether Alliantgroup had access to that
9 account?

10 A I'm sure they did.

11 Q Have you had the opportunity to examine some Google drive
12 accounts associated with those same Gmail addresses; is that
13 right?

14 A Yes, sir.

15 Q Now, in all of that, have you seen any evidence that Mr.
16 Mols deleted any emails after December of 2017?

17 A Well, again, we're talking about web accounts. And so
18 when an email is deleted on a web account, the only record of
19 those deletions would be on that provider's website or their
20 server, rather. So, for example, if he were to have deleted
21 Gmail, as an example, just you would have to go to Google
22 servers and subpoena that information from Google to say, give
23 me all the deleted email that this person's ever had. Now,
24 they only keep a very small portion of that after it's been
25 deleted and emptied out of his mailbox, and so the likelihood

1 that that's -- the information's going to come back is only --
2 that kind of request is only successful if it's made, if that
3 request is made, in a very short time period after those emails
4 have been deleted.

5 Q Well, my question, Mr. Kersh, is in your exams, have you
6 seen any such evidence?

7 A No, I have not.

8 Q You also agree that CCleaner's not really marketed as a
9 data wiping software, is it?

10 A It's a -- it's marketed as a -- one of the features that
11 it offers is a -- it's a privacy protector, which in my
12 experience is code word for a data wiping tool or some way to
13 keep your information private and keep it away from going to be
14 your employer or your spouse or whoever you're trying to keep
15 information from. So it may not use those words as a data
16 wiping tool but it certainly has those features and it
17 certainly uses language that's similar to that.

18 Q Well, does data wiping appear anywhere on its marketing
19 materials, the website, that you're aware of?

20 A Not that I'm aware of.

21 Q Why do you use the term "data wiping" then?

22 A It's -- that's my -- I mean that -- in the forensic world,
23 that is the net effect of what the tool does. It wipes data.

24 Q So when you call it data wiping software, you're using
25 your industry term, not the term the general public uses for

1 CCleaner; is that right?

2 A I'm using a term that describes what it's doing to the
3 data, and in this case evidence that's part of litigation. So
4 it is wiping data that is not to be wiped, not to be deleted.

5 Q That's not what I --

6 **THE COURT:** Okay, but if I were going to -- if I were
7 looking for data wiping software and I went on the internet and
8 googled "data wiping," what would come up, if you know?

9 **THE WITNESS:** I don't know. I know that CCleaner is
10 a very popular tool and it's -- it comes up quite a bit
11 whenever you're looking for software to do similar to what was
12 done here. So -- but I don't know the answer, direct answer,
13 to your question without doing it myself.

14 **BY MR. HUMPHREY:**

15 Q Well, similar to what was done here for what purpose,
16 because one of the purposes of deleting files is to make the
17 computer run better and, in fact, that's what CCleaner's
18 marketed for, isn't it?

19 A It's one of the primary things it's marketed for, yes,
20 sir.

21 Q And to follow up on what the Court asked you, if you were
22 to search for other types of data wiping software, there are
23 actually freely available data wiping software that is
24 purposely made for that, isn't that right?

25 A I don't know. Like I said, I haven't googled that recent

1 enough to know exactly what comes up.

2 Q How long have you been a forensic examiner?

3 A Twelve years.

4 Q Are you saying you don't know about free data wiping
5 software that's available?

6 A No, I think the question that the Court asked me was what
7 happens when you google data wiping software, and I don't know
8 that off the top of my head.

9 Q The question I'm asking you is, is there free data wiping
10 software available on the market and you can just google and
11 find?

12 A Yes, you -- yes, absolutely.

13 Q And it's actually marketed for that purpose, unlike
14 CCleaner, isn't that right?

15 A Yes.

16 Q It's just a google search away, isn't it?

17 A Yes.

18 Q As one popular one called "Eraser."

19 A Right, that's correct.

20 Q Now, CCleaner claims, and do you have any reason to doubt,
21 that 130 million people use CCleaner?

22 A Can you state that --

23 Q Sure. CCleaner's a popular, commonly used piece of
24 software, isn't it?

25 A I only know from my experience. I've seen it come up in

1 other cases. It's a pretty common one that we come across in
2 this field. I don't know about its popularity or its usage
3 worldwide. I just don't know that personally.

4 Q So if CCleaner says that it's been used by 130 million
5 people, you have no reason to doubt that.

6 A I don't.

7 Q Now, you said that you don't -- well, actually let me ask
8 you this about the method that you walked through in the slides
9 that were shown to the Court. If that's what was done, what
10 would be securely deleted by CCleaner?

11 A If you were to do that, you go and you enable the feature,
12 and then in order to specify, you have to specify the different
13 pieces of data that you want the software to wipe, so it gives
14 you a number of checkboxes and options to select. And then
15 when you run the software, it goes and deletes those things.

16 Q And what are the defaults? Are those files that would be
17 in your Documents folder or are they something else?

18 A No, it's -- it would be things like your web history and
19 things like that.

20 Q So it'd be things like temporary internet files; is that
21 right?

22 A Yes.

23 Q Cookies.

24 A Could be.

25 Q Data that you get from a website just to make a website

1 run.

2 A I think that's one of the checkboxes on the software.

3 Q Registry entries.

4 A Yes.

5 Q In your experience as a forensic examiner, are those the
6 types of files in which people place notes as to what they do
7 for their business?

8 A Not typically, no.

9 Q They save it in their documents, isn't that right?

10 A I would think most of the time, yes.

11 Q Do you have any evidence that anything other than
12 temporary internet files, cookies, registry entries, were
13 deleted using CCleaner?

14 A I don't. And the reason is, is because, I mean, you saw
15 the file listing of files. You can't make anything about the
16 content or what those files previously were because of their
17 current state, and it can't be determined. What it did do,
18 though, is when I did a test, I went and selected secure delete
19 and then selected all the default options for web history, for
20 cookies, for all the things, the registry entries, all the
21 things you just listed out, ran the software and examined it to
22 see how many of those Z files appeared on my computer, and it
23 never even got close to 57,000. And that's my testing but
24 that's -- and that's my -- that's the test that I ran to try to
25 get to that 57,000 number.

1 Q Well, how many total files were on Mr. Mols's laptop?

2 A I don't know. I mean, I can tell you how many are on
3 there now but I don't know how many were on their before he ran
4 the software.

5 Q How many are on there now?

6 A I'd have to look at my -- look at the image itself and
7 give you a total count.

8 Q Can you give me an estimate?

9 A I think -- I went and did the same user file filter on Mr.
10 Mols's personal laptop that I did on his Alliantgroup computer.
11 On his Alliantgroup computer, there were around 8,400 user-
12 created file types. I did the same filter on his laptop and
13 there were a little bit over 500 user-created files on it.

14 Q User-created files, that's not what the 57,000 number is,
15 is it? You're talking about the files deleted, those weren't
16 just user-created files or you don't know if they were user-
17 created files.

18 A I don't think that that is something that anybody is going
19 to ever be able to know.

20 Q Those could be non-user-created files, correct?

21 A It could. You know, like I said in my test, I went and
22 ran on my exam machine that test to try to get to -- try to
23 approach the 57,000 number. And in all of the tests that I
24 ran, I never could get anywhere close to 57,000 on test.

25 Q But how many total items are on the computer that could be

1 something that's (indiscernible) files, how many total items in
2 the entire computer that you searched?

3 A I'd have to go and look at the computer image itself and
4 give you a full count. I don't know off the top of my head.

5 Q I can tell you I just searched my computer and came up
6 with more than 200,000; does that sound out of the ordinary to
7 you?

8 A No, that sounds about right. There's a lot of files on a
9 computer.

10 Q So comparing 57,000, it's not fair to compare it with an
11 8,400 number of user files. It has to compare with all the
12 files on a computer, isn't that right?

13 A Yes, sir.

14 Q So as far as you know, it could be a very small percentage
15 of the total files that are on the computer, which include all
16 kinds of files that the internet just puts on your computer;
17 isn't that right?

18 A Yes, sir.

19 Q So you can't sit here and tell us that 57,000 files is a
20 lot or a little, can you?

21 A Like I said, the only thing I can tell you is that in my
22 testing, I think the most -- the highest number I ever got in
23 my testing was around 2,500. And so we're talking about a
24 delta of between 57,000 and 2,500 from my test and what was
25 done on the laptop. So I don't -- but I can't sit here and

1 tell you what those files are, again, because they're all Z's
2 and it's deleted.

3 Q But again, to be clear, that 2,500, that's through a
4 filter of user files, not -- and these 57,000 are unfiltered.

5 A No, sir, these 2,500 files were the default checkmarks on
6 CCleaner for registry for my web history, for my cookies, and
7 things like that, and the most it deleted was 2,500 not 57,000.

8 Q Do you never remove temporary files from your computer?

9 A I don't know what the setting is on the test computer that
10 I ran. I don't know that.

11 Q Are there -- is there software or system resources on the
12 computer that regularly deletes these files in order to keep
13 the computer running well?

14 A Yes, sir.

15 Q Do you know whether that was running on your test
16 computer?

17 A I don't.

18 Q And if it was, you would expect to find fewer files
19 deleted by CCleaner using those same settings.

20 A Yes, sir.

21 Q Now, you also agree that you forensically imaged between
22 email accounts and devices at least 19 devices and accounts at
23 this point in this case.

24 A I believe that's right.

25 Q So what we're talking about here is a -- some fraction of

1 data on one device, correct?

2 A Correct.

3 Q Now, do you know whether you've uncovered any document on
4 anything that's personally owned by Brad Mols that's a trade
5 secret of Alliantgroup's?

6 A That's not my area of expertise.

7 Q So you can't say here that that's been found anywhere
8 else?

9 A Again, that's -- I'm running the protocol and producing it
10 to you guys and you all argue over what's what, so --

11 Q Now, you understand that Mr. Mols at least some point or
12 his wife went to Best Buy; have you heard about this at all?

13 A I read that in her declaration, yes, sir.

14 Q Couldn't a Best Buy tech have advised them in how to --
15 instructed them how to use CCleaner to click on secure delete?

16 A They could have.

17 Q Now that -- and you talked of dates and times of when this
18 was run, now that depends on the system having the correct date
19 and time on it, doesn't it?

20 A Yes, sir.

21 Q Right, because there's not some objective way that dates
22 and times are implanted onto these actions, it comes from the
23 computer system time, right?

24 A Yes, sir.

25 Q And that time can be off on some systems, isn't that

1 right?

2 A Well, that's why when we image the computer, we check the
3 time clock on the computer against the current time to make
4 sure that the time clock was accurate, and it was on the laptop
5 and the desktop.

6 Q But that doesn't show you what the time clock looked like
7 when CCleaner was running, other than it shows you what time it
8 was but it doesn't tell you that that time was accurate.

9 A It tells us what time -- it tells us that the time clock
10 at the time that we imaged the computer on January 16th was
11 accurate. If we wanted to go and answer -- go down this rabbit
12 trail, forgive me, we can do that. There's log files that
13 record when those time clocks are changed so that's something
14 we could certainly examine and figure out.

15 Q And malfunctioning and slow running computers can have
16 time clocks that are off, isn't that right?

17 A I'm not sure I follow your question.

18 Q Well, sir, computers sometimes malfunction and have
19 timestamps and date stamps that are not current.

20 A I've never encountered that before.

21 Q Now, I just want to clarify, you can't sit here today just
22 generally and say that -- you're certainly not here to testify
23 that Mr. Mols stole any trade secrets from Alliantgroup, right?

24 A That's correct.

25 Q You don't have any evidence of that yourself.

1 A I am not -- again, I am not the expert on what is
2 Alliantgroup proprietary information or not.

3 Q So you're currently attempting to recover the files that
4 are -- the Z files and files that are deleted by CCleaner; is
5 that right?

6 A Yes, sir.

7 Q You don't know whether that's going to be successful or
8 not at this time.

9 A That's correct.

10 Q It could be successful to some extent as far as you know
11 sitting here today.

12 A It could be, but I -- to be completely candid, I think
13 it's a fool's errand. I don't think we're going to be able to
14 be very successful with it. But I want to do everything we can
15 to assist the Court in resolving this particular issue.

16 Q Now, there was some testimony earlier that there's more
17 than one type of secure delete, between one, three, seven, and
18 35 passes; is that right on CCleaner?

19 A Yes, sir.

20 Q Do you know which one of those was run?

21 A No, sir.

22 Q It could have been the one pass, right?

23 A It could have been.

24 Q And your -- in addition to not knowing what was in the
25 files, you don't know whether these files were in a temporary

1 internet files folder or somewhere else in that computer; is
2 that right?

3 A That's correct.

4 Q With the -- and forgive me for jumping to another topic of
5 this, you did talk about the -- Mr. Mols's Alliantgroup
6 computer, which you did examine. Now, did you see any evidence
7 that he downloaded anything onto any hard drive or any thumb
8 drive?

9 A We saw -- I think we were having -- we had -- I was
10 questioned about the missing SanDisk thumb drive, the mini --
11 the missing mini SanDisk thumb drive. That device was
12 connected less than a month before his last day. And if he had
13 dragged files to it, we wouldn't see that. If he had right-
14 clicked and send to this device, or there's a lot of different
15 methods you can use to transfer data to a thumb drive that are
16 undetectable to forensics. So really the only way for us to
17 determine what he did or didn't do is to have that device, and
18 then I can answer your questions about what did he copy to it
19 and when and what happened with it after it was copied to it.

20 Q When was it attached to his personal laptop? You
21 testified that it was.

22 A It was attached to his personal laptop. I can't answer
23 your second question, which is when was it connected, because
24 the Windows upgrade that was done on January 3rd wiped out
25 those connection dates for those devices.

1 Q Let's talk about that. Would you expect an average user
2 to understand that installing Windows would do anything to the
3 ability to find what USB drives were attached to a computer?

4 A No, sir.

5 Q So it's not -- is that something you would expect someone
6 to do in order to deliberately destroy evidence, is install
7 Windows 10 on a computer?

8 A An advanced user would know that but I don't think the --
9 a layperson would understand or know that it's going to have
10 that effect, no, sir.

11 Q Well, wouldn't an advanced user have easier ways of
12 accomplishing that than installing an entirely new operating
13 system?

14 A I would imagine so, yes, sir.

15 Q And isn't it true that Microsoft was aggressively
16 marketing upgrades to Windows 10 throughout the last two years?

17 A Yes, sir.

18 Q In fact, they automatically installed Windows 10 on a
19 number of people's computers, isn't that right?

20 A Yes, sir.

21 Q So there are actually people who woke up a day, did not
22 buy Windows 10, did not choose to download Windows 10, and woke
23 up with Windows 10.

24 A Yes, sir. I don't find the upgrade of Windows 10 to be
25 notable. I don't think it was something intentional that was

1 done to subvert our examination. But the fact is it was done
2 and those dates are no longer there because of that. But,
3 again, I don't take that as something that she or whoever
4 upgraded the laptop did so -- intentionally.

5 Q I agree. Do you know -- and tell me if you've got an
6 estimate of this -- that of everything you forensically
7 examined in this case, do you know how many bytes or gigabytes
8 or files or any number that you can attach to that?

9 A No, sir, not offhand. I could find that out but I don't
10 know it right here.

11 Q But it was at least 19 different accounts and devices,
12 right?

13 A Well, some of those computers were -- we examined twice,
14 or we imaged twice, so there's some duplicates in there. But
15 there's about 19 evidence items, yes, sir.

16 Q Nineteen to date, but you've got at least one or two more
17 since that 19 came in.

18 A I think we've got --

19 Q The duplicates would bring it down to 17 but then you've
20 got --

21 A Our last evidence item is number 19.

22 Q And that doesn't include April Torres's laptop, does it?

23 A No, it doesn't.

24 Q And you examined that one, didn't you?

25 A Yes, sir.

1 Q Did you find any evidence of trade secrets deleted off of
2 that computer?

3 A I --

4 **MR. SIMMONS:** Objection, your Honor, he's already
5 testified that he doesn't -- he's already testified that he's
6 not here to testify as to what's a trade secret and what's not
7 a trade secret.

8 **MR. HUMPHREY:** Let me ask you something different
9 then. I'll withdraw that question.

10 **BY MR. HUMPHREY:**

11 Q Do you have any evidence that that computer was wiped with
12 anything?

13 A Can you give me a second to --

14 Q Sure, absolutely.

15 A -- look at my report? On page 29 of my report, I state
16 that on April 27, 2016, there were 35 files deleted from the
17 computer. The table on that page that continues on page 30
18 includes the list of files that were deleted off of the
19 computer.

20 Q So you were able to recover these files.

21 A I don't recall. If they're in the recycle bin, there's a
22 good chance that we could get those back, yes, sir.

23 Q Have you attempted to recover those files?

24 A I don't recall.

25 Q And in your examination of Ms. Torres's computer, did you

1 find any indication that Mr. Mols ever accessed it after
2 leaving Alliantgroup, after May of 2016?

3 A I -- the answer to that question is a little more
4 complicated than you would think because we always get asked
5 the question about who did this on this computer, who ran this
6 search, who did whatever action was done on the computer. And
7 we don't have video cameras to be able to say it was him or
8 her. I don't know if Mr. Mols had her password. I know that
9 there was not a Mols B (phonetic) user name that was on that
10 computer that -- like we saw on his other devices, but I don't
11 -- I can't tell you if he had her password and he accessed the
12 computer using her password, and I just can't -- I can't
13 accurately answer that question.

14 Q You haven't seen anything that would lead you to believe
15 that that's what happened, that Mr. Mols accessed it.

16 A I haven't analyzed the computer to see if his personal
17 email account was accessed. That would be an indicator that he
18 used the computer or that he conducted personal communications
19 that -- of topics that he would know about. I haven't analyzed
20 the computer from that frame. We've looked at this to
21 determine if data was transferred off the computer but not to
22 focus on the questions that you just asked.

23 Q But my question's just now what you did or could have done
24 but what you know today.

25 A I don't know today.

1 **MR. HUMPHREY:** I'll pass the witness, your Honor.

2 **THE COURT:** Mr. Simmons?

3 **REDIRECT EXAMINATION**

4 **BY MR. SIMMONS:**

5 Q We heard a lot about why you cannot tell why -- whether
6 the 57,000 plus files were temporary internet files or registry
7 files or Word documents with every Alliantgroup trade secret on
8 it. Is there a reason why you can't tell us what type of files
9 were contained within that 57,000 files?

10 A Because they were securely wiped. If they had been
11 deleted using the normal procedure, the normal default in the
12 software, there's a chance that I could be able to tell you
13 what was affected. But using secure delete features makes it
14 impossible to answer that question.

15 Q And if you wouldn't mind turning back to Plaintiff's 1,
16 second page from the back. It's the slides, Plaintiff's 1. We
17 have the screenshots. What's -- what is this a screenshot of,
18 Mr. Kersh?

19 A So what I did in my test to make these screenshots is I
20 went and specified a specific folder which there's -- it's a
21 featured called "include" that's in the software, and it allows
22 the user to specify a folder of user files or whatever, or
23 system files or whatever folder they want to on the computer,
24 or even individual specific files, you can specify that in the
25 software. And then when you run the software, to delete those

1 files or that folder, this is the user prompt that tells you
2 the selected files will be deleted from your PC, do you wish to
3 continue, and they're given the option of continuing or
4 canceling.

5 Q So based on your knowledge as a forensics expert and your
6 usage of CCleaner, do you believe it would be possible for a
7 user not to know that they're deleting files?

8 A I think the layperson would be able to read that message
9 and understand what it means.

10 **MR. SIMMONS:** Pass the witness, your Honor.

11 **MR. HUMPHREY:** Just two more questions on recross.

12 **RECROSS EXAMINATION**

13 **BY MR. HUMPHREY:**

14 Q One question, I see a -- on the same page -- or, sorry,
15 the page before the one that Mr. Simmons just went over you
16 with, there's a checkbox down the bottom middle that says "wipe
17 MFT free space;" what is that?

18 A So the MFT is the master file table. And it's -- all it
19 is, is just talking about the free space on an MFT, to wipe
20 that and -- as part of the secure delete feature.

21 Q Well could it do that without being a secure delete?

22 A I don't know -- well, let me look. Yes, sir, it looks
23 like that's a default option. If you look to the previous
24 page, where the default is selected for normal file deletion,
25 that checkbox is checked.

1 Q So after files that are -- have been deleted is then
2 removed from the file index where you can access them, this
3 wipes that, too.

4 A Correct.

5 Q Would that result in a Z-out artifact?

6 A No, sir, not in my testing it didn't.

7 Q Now, when you uninstall CCleaner, does it securely delete
8 itself?

9 A I don't believe so, no, sir.

10 Q Do you think you can recover the CCleaner program or its
11 I-N-I file that shows its settings?

12 A I attempted to do that and was unsuccessful.

13 Q Do you know of any other way other than what you used in
14 order to attempt to recover that?

15 A Not without some more research on how to do that. But I
16 feel like I use the standard procedures that you would use to
17 try to recover those and I wasn't successful.

18 **MR. HUMPHREY:** Pass the witness, your Honor.

19 **MR. SIMMONS:** Nothing further, your Honor.

20 **THE COURT:** I do have a question. So on this second
21 to the last screenshot, okay, when you've got the menu going
22 down the left-hand side, some of the boxes, most of the boxes
23 are checked, that is what will be deleted, correct, --

24 **THE WITNESS:** Yes.

25 **THE COURT:** -- from the PC?

1 **THE WITNESS:** Yes, ma'am.

2 **THE COURT:** So, for example, if you had user files
3 that you had put in the recycle bin, then those would be
4 deleted forever under CCleaner.

5 **THE WITNESS:** Yes, ma'am, that's correct.

6 **THE COURT:** All right. But if they weren't put in
7 the recycle bin, would they be deleted under any of these
8 options here?

9 **THE WITNESS:** Not under any of these options that
10 you're seeing there in those checkboxes --

11 **THE COURT:** What about the ones that are not checked?
12 I can't see all of them.

13 **THE WITNESS:** If you could, ma'am, the last
14 screenshot in there, it shows options and then "include," --

15 **THE COURT:** Okay.

16 **THE WITNESS:** -- this is where the user can specify a
17 folder or a file --

18 **THE COURT:** Oh, okay.

19 **THE WITNESS:** -- specific file or folder that they
20 want to be --

21 **THE COURT:** Okay.

22 **THE WITNESS:** -- included in the wipe.

23 **THE COURT:** You said you could empty out your Word --
24 you could delete your Word files.

25 **THE WITNESS:** Yes, ma'am.

1 **THE COURT:** Okay, all right. Any questions prompted
2 by my questions, Mr. Simmons?

3 **MR. SIMMONS:** No, your Honor.

4 **THE COURT:** Mr. Humphrey?

5 **MR. HUMPHREY:** Just one, your Honor.

6 **FURTHER RECROSS EXAMINATION**

7 **BY MR. HUMPHREY:**

8 Q You did find Word files on Mr. Mols's computer when you
9 imaged it, didn't you?

10 A Yes, I did.

11 **MR. HUMPHREY:** Nothing further, your Honor.

12 **FURTHER REDIRECT EXAMINATION**

13 **BY MR. SIMMONS:**

14 Q So in this "include" portion, if someone had a file folder
15 "Alliantgroup work file," you could select that file
16 specifically and delete everything in the contents; am I
17 understanding that correct?

18 A Yes, sir, you are, that's correct.

19 **MR. SIMMONS:** Pass the witness.

20 **THE COURT:** Anything else?

21 **MR. HUMPHREY:** Nothing further, your Honor.

22 **THE COURT:** All right, thank you, sir, you may stand
23 down.

24 **(Witness steps down)**

25 //

1 Is that all you have today?

2 **MR. SIMMONS:** Yes, your Honor.

3 **THE COURT:** All right, then I guess I'll see you,
4 what, on Tuesday?

5 **MR. HUMPHREY:** I think so, your Honor. And I just
6 wanted to point out that you're going to hear from my clients
7 on Tuesday, but I really do think that one thing to focus on
8 here is not just this idea of what happened there but what was
9 the prejudice. We have a huge universe of evidence with which
10 Alliantgroup has had access to in order to prove their case.
11 This is a case involving trade secrets dealing with sales. You
12 can't use those in a secret. We have not one witness that's
13 come forward to say that he did anything wrong, not one piece
14 of documentary evidence that showed he was taking a trade
15 secret. Every witness other than Alliantgroup who's testified
16 has said he didn't do anything like this, he didn't source
17 (indiscernible) CPAs or clients or he didn't steal any
18 evidence. It's not plausible that all of the evidence they
19 have that they could use to prove their case is in these files.
20 And that's why I think that that's an important thing to
21 remember moving forward in this case. And, frankly, I think
22 it's the reason why the Court should still hear our motion for
23 summary judgment and consider their evidence and what they --
24 their explanation as to why they need this evidence to prove
25 their case at all. That's all, your Honor.

1 **MR. SIMMONS:** Your Honor, the universe of evidence
2 that we've been provided just from the -- just like the
3 beginning whenever Mr. Mols selectively gave us that one time
4 email, is the universe of documents that they're allowing us to
5 see. There are two USB devices that were plugged into his
6 Prime laptop that have not been turned over, and Mr. Humphrey
7 says do -- Mr. Mols does not have. One of those USB devices
8 was plugged into his Alliantgroup laptop and his Prime Tax
9 Group laptop. Missing. And that's compounded by the fact that
10 according to their declarations, which we just found out there
11 was yet another entire laptop that contained all of the 57,000
12 files that Ms. Mols allegedly had copied and then returned the
13 day after this Court ordered both her and her husband not to
14 delete anything. That laptop, its files, are gone forever as
15 well. So it's not a one off. It's a whole pattern and it's
16 getting worse and worse as it continues.

17 **MR. HUMPHREY:** I have to say clearly they should not
18 have run CCleaner, and we're going to hear why on Tuesday.
19 But, your Honor, we didn't kidnap and hide away CPAs and
20 clients they could have deposed and talked to about all this
21 stuff. I mean, the use of a trade secret in a sales context
22 creates other evidence other than what's on this computer. If
23 it was done, the evidence would be out there. And it's not.

24 **THE COURT:** Well then, you know -- I'm not going to
25 say anything. All right, --

1 **MR. SIMMONS:** Thank you, your Honor.

2 **THE COURT:** -- we'll see you Tuesday.

3 **THE CLERK:** All rise.

4 **(This proceeding was adjourned at 3:11 p.m.)**

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Signed

July 11, 2018

Dated

TONI HUDSON, TRANSCRIBER